

LOCAL CRIMINAL RULES OF THE ALLEN SUPERIOR COURT

Effective January 1, 1995

Including Amendments Received Through October 15, 2005

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Rule 1. Scope of the Rules

These rules are adopted pursuant to the authority of Indiana Rules of Trial Procedure, T.R. 81, and are intended to supplement those rules as well as the Indiana Rules of Criminal Procedure. They shall govern the practice and procedure in all cases in the Allen Superior Court, Criminal Division, and shall be construed to secure the just, speedy and efficient determination of every action.

Adopted effective January 1, 1995.

Rule 2. Court Appearances

- (A) If an arrested person is released from custody or admitted to bail prior to his first court appearance, he shall personally appear in court forthwith or at such other time as competent authority may direct.
- (B) Upon the first appearance of the defendant, the court shall inform the defendant of the charge pending against him and of his rights as required by IC 35-33-7-5.
- (C) The court may allow the defendant reasonable time and opportunity to consult counsel.
- (D) The court may admit the defendant to bail as provided by law, or by court rule or order.
- (E) The court shall fix a time for the defendant's next court appearance which shall be the omnibus hearing unless otherwise ordered.
- (F) In all felony cases, the defendant is required to appear personally for appointment of counsel, waivers of right, initial hearing, omnibus hearing, plea, trial setting, trial, and such other times as the court may direct.
- (G) In all misdemeanor cases, the defendant is required to appear personally at the initial hearing, guilty plea, waivers of right, unless a written waiver is provided, and jury verification.

Adopted effective January 1, 1995.

Rule 3. Appointed Counsel

- (A) A defendant, who is financially unable to obtain counsel, and who is not charged with an infraction or ordinance violation, is entitled to appointed counsel in accordance with this rule.
- (B) If a defendant states that he is financially unable to obtain counsel, the court shall cause the defendant's financial circumstances to be investigated.
- (C) If the court's investigation reveals that the defendant is indigent, the court shall appoint the Allen County Public Defender to represent the defendant.
- (D) Notwithstanding the provisions of this rule, the court may, in the interest of justice, appoint counsel for any person at any stage of any proceedings.

Adopted effective January 1, 1995.

Rule 4. Appearance of Counsel

- (A) Any attorney representing a defendant shall appear for such defendant immediately upon being retained or appointed, by signing and filing an appearance in writing with the court containing his name, attorney number, address and telephone number and shall serve a copy of said appearance on the Deputy Prosecuting Attorney assigned to the cause or to the office of the Prosecuting Attorney.
- (B) At such time as the Office of the Prosecuting Attorney assigns a case to a Deputy Prosecuting Attorney, that Deputy Prosecuting Attorney shall file a written appearance in the same form as set out above, and shall serve a copy of the appearance on counsel for the defendant.

Adopted effective January 1, 1995.

Rule 5. Withdrawal of Counsel

- (A) Permission of the court is required to withdraw the appearance of counsel for a defendant. IC 35-36-8-2 shall govern the granting of such permission.
- (B) Counsel desiring to withdraw their appearance shall notify the defendant of such intention, in writing, not less than ten (10) days prior to the counsel's filing of such motion. Counsel shall further send notice of the filing of said motion to the defendant, which notice shall indicate the date, time and place of said hearing. It shall be sent by first class mail and shall inform the defendant of the necessity to be present. A copy of said notice shall be attached to counsel's Motion to Withdraw. No withdrawal of appearance shall be granted unless said procedure is followed.

Adopted effective January 1, 1995.

Rule 6. Initial Hearing and Plea

- (A) Initial hearings shall be conducted pursuant to and in accordance with IC 35-33-7-5 et seq.
- (B) Guilty pleas shall be conducted pursuant to and in accordance with IC 35-35-1-1 et seq.
- (C) All guilty pleas with a plea agreement must be finalized and a plea entered not later than 1:30 p.m. of the last business day prior to the jury trial date. No plea agreement will be considered by the court after that date. The court will deny all requests for a continuance

based on the need for further plea negotiations.

Adopted effective January 1, 1995.

Rule 7. Trial Setting

Setting of trials on the same date with different Judges is prohibited. Multiple settings for the same trial date with the same Judge is allowed.

Adopted effective January 1, 1995.

Rule 8. Trial

- (A) If the defendant pleads not guilty, the court shall determine whether a jury trial is waived and shall fix a time for the trial. The date of trial shall be fixed at such time as will afford the defendant a reasonable opportunity for preparation and for representation by counsel if desired.
- (B) A verbatim record shall be taken in all trials.

Adopted effective January 1, 1995.

Rule 9. Jury Instructions

- (A) All requests for jury instructions tendered in accordance with Criminal Rule 8 and Trial Rule 51 of the Indiana Rules of Trial Procedure must be submitted to the court, with citations of authority, not later than the day prior to the trial. Parties are encouraged to utilize the Indiana Pattern Jury Instructions wherever possible.
- (B) Exceptions to this requirement will be made only when the matters on which the instruction is sought could not have been reasonably anticipated in advance of the trial. Proposed instructions need not be exchanged by counsel until after the evidence has been submitted.

Adopted effective January 1, 1995.

Rule 10. Motions

- (A) The Court encourages the early filing of motions so that they can be ruled upon prior to the day of trial.
- (B) An application to the court for an order shall be by motion. A

motion other than one made during the trial or hearing shall be in writing. Unless otherwise provided by law or rule, only the original copy of a motion need be filed. It shall state the grounds upon which it is made and set forth the relief or order sought. It may be supported by affidavit. It shall be accompanied by a memorandum of law in support thereof. It shall be signed by an attorney of record or the defendant personally and shall clearly identify the name, attorney number and address of any attorney filing the same. A rubber stamp or facsimile signature on the original copy shall not be acceptable.

- (C) All motions requiring a hearing before the court shall be set on the court calendar by the moving party after first consulting with opposing counsel. Any motion requiring a hearing before the court which is not set for hearing on the court calendar by the moving party shall be summarily denied.
- (D) A proposed form of order shall accompany all motions.

Adopted effective January 1, 1995.

Rule 11. Continuances

Upon motion of any party, the court may grant a continuance only upon a showing of good cause and only for so long as necessary, taking into account not only the request or consent of the prosecution or defendant, but also the public interest in the prompt disposition of the case. All motions seeking a continuance shall be heard by the court and shall therefore be set for hearing in accordance with Rule 10(C) above.

Adopted effective January 1, 1995.

Rule 12. Failure to Appear

If a defendant fails to appear before the court when summoned or otherwise ordered by the court to appear, the court may summarily issue a warrant for his immediate arrest and appearance before the court.

Adopted effective January 1, 1995.

Rule 13. Pre-Trial Discovery

In all felony cases, the court has entered the following General Order concerning pre-trial discovery:

- (A) The State shall disclose to the defendant the following material and information on or before thirty (30) days following the Initial Hearing.
- (1) The names and last known addresses of persons whom the State may call as witnesses, together with
 - (a) their relevant written or recorded statements;
 - (b) memoranda containing substantially verbatim reports of their oral statements (if any memoranda exist);
 - (c) memoranda reporting or summarizing oral statements (if such memoranda exist);
 - (d) a brief statement indicating the nature of each witness' involvement in the case; such statements may be no more than a reference to statements described in paragraphs (A)(1), (a), (b), or (c) above.
 - (2) Any written or recorded statements and the substance of any oral statements made by the accused or by a co-defendant, and a list of witnesses to the making and acknowledgement of such statements.
 - (3) A transcript of the recorded grand jury testimony of persons whom the prosecuting attorney may call as witnesses at a hearing or trial. A typed transcript of said testimony shall be provided if it is available.
 - (4) Any reports or statements of experts, made in connection with the particular case, including results of physical or mental examinations and of scientific tests, experiments or comparisons.
 - (5) Any books, papers, documents, photographs, or tangible objects which the prosecuting attorney intends to use in the hearing or trial or which were obtained from or belong to the accused, together with the location of such items and an indication of appropriate means for defense counsel's examination of same. Under circumstances where chain of custody issues are readily apparent, such as drug cases, such chain shall be provided to the extent available on the disclosure date provided above and shall be supplemented:
 - (a) upon defendant's written request;
 - (b) by pre-trial conference; and
 - (c) thereafter as ordered to complete such chain.
 - (6) Any record of prior criminal convictions which may be used for impeachment of the persons whom the State intends to call as witnesses at the hearing or trial.

- (7) A copy of any written agreement and the complete substance of any oral agreement made by the State with
 - (a) any witnesses to secure their testimony or
 - (b) any co-defendant or other person charged arising out of the same incident.
 - (8) Any evidence which tends to negate the guilt of the accused as to the crime charged or tends to reduce the class of the act alleged or which would tend to mitigate his punishment.
 - (9) Evidence of other crimes which the State intends to use at trial, pursuant to Rule 404, Indiana Rules of Evidence.
 - (10) Newly discovered material within the above categories shall be provided to opposing counsel as soon as reasonably possible following discovery of same.
- (B) (1) The State shall perform these obligations in any manner mutually agreeable to the Prosecutor's Office and to defense counsel. The State shall provide legible copies of existing written statements described in paragraphs (A)(1), (2), (3), and (7). Other items shall be provided for examination, testing, copying, photographing, or other proper use either by agreement or at specified reasonable times and places. Defense counsel shall provide reasonable notice of such examination and shall schedule these examinations in cooperation with the State. An application to the court shall be made to obtain copies of audio or videotape. Said application shall state in specific terms the necessity for such copies.
- (2) The State shall make a record of compliance with this order not more than five (5) days after the date set out in paragraph (A) above by filing with the court:
 - (a) its witness list together with the statement described in (A)(1)(d);
 - (b) a suitable description of memoranda and items provided, but not necessarily by providing copies of all such items to the court; and
 - (c) an indication of arrangements made for inspection, if any.
- (C) Subject to constitutional limitations, and not later than thirty (30) days following the date that the State has provided to the defense the information required under this rule, defense counsel shall inform the State of any defense which counsel intends to present at a hearing or trial and shall furnish the State with the following information within counsel's possession and control:

- (1) The names, last known addresses, dates of birth and social security numbers of persons defense counsel intends to call as witnesses.
 - (2) Any books, papers, documents, photographs, or tangible objects which are intended to be used at a hearing or trial.
- (D) (1) The defense shall perform these obligations in any manner mutually agreeable to the Prosecutor's Office and to defense counsel. Defense shall provide the same documents in a fashion similar to the State's obligations described in (B)(1).
- (2) The defense shall make a record of compliance with this order not more than five (5) days after the date set out in paragraph (C) above by filing with the court:
 - (a) its witness list together with the statement described in (C)(1)(a);
 - (b) a suitable description of items provided for examination, etc.; and
 - (c) the statement of defense described in (C).
- (E) The court anticipates that compliance will be deemed satisfactory unless failure to comply is brought to the court's attention by Motion to Compel. Sanctions for failure of compliance or violations of orders on Motion to Compel shall be pursuant to Trial Rule 37. Prior to the filing of a Motion to Compel counsel shall comply with the provisions of Trial Rule 26(F).
- (F) Nothing herein shall limit any party's right to seek protective orders to avoid destruction or other loss of evidence, or to seek deposition at such times as they may desire.
- (G) The court may deny disclosure upon showing that:
- (1) There is a substantial risk to any person of physical harm, intimidation, bribery, economic reprisals, or unnecessary annoyance or embarrassment resulting from such disclosure which outweighs any usefulness of the disclosure to counsel.
 - (2) There is a paramount interest in non-disclosure of an informant's identity and a failure to disclose will not infringe the constitutional rights of the accused. Disclosure of the identity of witnesses to be produced at a hearing or trial will be required.
 - (3) Such determination of non-disclosure shall be by the court and shall not be within the discretion of the State or defense. Such non-disclosure shall be sought by motion for protective order.

- (H) Disclosure shall not be required of:
- (1) Any matter otherwise protected by law (however disclosing the identity of juvenile co-defendants or witnesses shall not be barred because of delinquency non-disclosure statutes).
 - (2) Work product of counsel including memoranda of opinions, theories, or research for themselves or from their legal or in-house investigative staff.
- (I) This discovery order is a continuing order through the trial of this cause and no written motion shall normally be required except to compel discovery, for a protective order, or for an extension of time.
- (J) Failure of either party to engage in and comply with discovery shall not be excused by the parties' unsuccessful or incomplete efforts to enter into a plea agreement or other resolution of the case unless both parties waive in writing
- (1) compliance with this order for a specified period of time and
 - (2) any speedy trial requirements.
- (K) Any cost for reproduction or transcripts under this order shall be borne by the party to whom the information is provided except that as to pauper counsel defendants the costs shall be borne by the State or County.
- (L) The time limits for providing discovery materials to opposing counsel set out at (A) and (B) herein shall be reduced to fifteen (15) days in the event that the defendant requests a speedy trial.
- (M) Depositions should be scheduled for, and taken at, the Office of the Allen Prosecuting Attorney.
- (N) Nothing in this Order shall be in contravention of case law or statute.

Adopted effective January 1, 1995; amended effective March 1, 1996; Amended February 22, 1999, effective July 1, 1999.

Rule 14. Motion to Sequester

All motions to sequester a jury shall be filed no later than the 30th day preceding the time fixed for trial or within five (5) days after setting the case for trial, whichever is later.

Adopted effective January 1, 1995.

Rule 15. Stipulations

All stipulations must be in writing, signed by all parties or their counsel, signed by the defendant personally, and approved by the court.

Adopted effective January 1, 1995.

Rule 16. Pretrial Conference

At any time after the filing of the indictment or information, the court upon motion of any party or upon its own motion, may order one or more conferences to consider such matters as will promote a fair and expeditious trial. At the conclusion of a conference the court shall prepare and file a memorandum of the matters agreed upon. No admission made by the defendant or his attorney at the conference shall be used against the defendant unless the admissions are reduced to writing and signed by the defendant and his attorney.

Adopted effective January 1, 1995.

Rule 17. Selection of a Jury Panel

When jury panels have been drawn, the clerk shall cause a questionnaire to be sent to each member of such panels to be answered and returned by such persons. Such completed jury questionnaires are confidential and may only be removed from the files of the clerk or court by an attorney of record giving a proper receipt for a period of twenty-four (24) hours for inspection and copying the same.

Adopted effective January 1, 1995.

Rule 18. Special Procedures for Misdemeanor and Traffic Division

- (A) An attorney may enter his appearance on behalf of a defendant prior to the defendant's next court appearance and secure a one (1) week continuance without appearing before the court.
- (B) Defendants requesting counsel (private or public defender) will be granted a continuance of 2 weeks for the purpose of obtaining counsel.
- (C) Upon initial appearance, counsel will be entitled, upon request, to a continuance of 2 to 3 weeks for the purpose of investigating the case, discussing potential settlement with the Prosecuting Attorney, etc.

- (D) At second appearance, counsel and client **MUST** be prepared to enter a plea (guilty or not guilty) in the case.
- (E) Clients **MUST** accompany attorneys at **ALL** court appearances including initial continuances for investigation, trial setting, jury verification, etc.
- (F) The defendant must appear personally, or a written waiver signed by the defendant must be filed in order to waive trial by jury.
- (G) When a jury trial is requested, a jury verification date shall be set not later than six (6) days prior to the date set for the jury trial. The defendant shall appear personally on that date. Failure of the defendant and his attorney to appear shall result in the jury trial being cancelled and reset for a later date, and defendant being remanded to the custody of the Allen County Sheriff pending trial.

Adopted effective January 1, 1995.

Rule 19. Procedure Not Otherwise Specified

If no procedure is specially prescribed by these rules, the court may proceed in any lawful manner not inconsistent with these rules or with any applicable constitutional provision, statute, rule of the Supreme Court of Indiana, or local civil rules of the Allen Superior Court.

Adopted effective January 1, 1995.

Rule 20. Service of Notice of Appeal

In addition to filing the Notice of Appeal with the Clerk, the Notice of Appeal shall also be hand-delivered to the Court Reporter for the Judicial Officer from which the appeal is taken.

The Court Reporter shall make a CCS entry acknowledging receipt of the Notice of Appeal.

Adopted effective June 1, 2000.